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PUBLIC UTILITIES  
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

DOCKET NO. 2008-0274

Instituting a Proceeding to Investigate  
Implementing a Decoupling Mechanism for  
Hawaiian Electric Company, Inc., Hawaii Electric  
Light Company, Inc., and Maui Electric Company,  
Limited

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT  
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S  
MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE  
OF HAWAII SOLAR ENERGY ASSOCIATION**

**DECLARATION OF COUNSEL**

**DECLARATION OF DEAN K. MATSUURA**

**EXHIBITS "A" & "B"**

**AND**

**CERTIFICATE OF SERVICE**

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A LIMITED LIABILITY LAW PARTNERSHIP LLP

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MAUI ELECTRIC COMPANY, LIMITED

BEFORE THE PUBLIC UTILITIES COMMISSION  
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MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE  
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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT  
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")<sup>1</sup>  
respectfully submit this Memorandum in Opposition to the Motion to Intervene of Hawaii Solar  
Energy Association ("HSEA"), dated November 13, 2008 ("Motion").<sup>2</sup>

HSEA should not be allowed to intervene as a full party in this docket, as: (1) HSEA's  
focused interest in the "solar industry" and "development of PV systems" is beyond the scope of

<sup>1</sup> HECO, HELCO and MECO are collectively referred to herein as the "HECO Companies" or "Companies".

<sup>2</sup> The Motion was filed on November 13, 2008 and served upon HECO and its attorneys by mail on November 14, 2008. See Declaration of Counsel; Declaration of Dean K. Matsuura; and Exhibits "A" and "B", attached hereto. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion . . . ." HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation . . . ." HAR § 6-61-21(e) states: "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Seven days from November 14, 2008 (the postmark on the envelopes), excluding Saturdays, Sundays and holidays, is Tuesday, November 25, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed.

revenue decoupling and ratemaking issues, and could only serve to unduly broaden the issues or delay this proceeding; (2) HSEA has not demonstrated that its intervention as a party will assist in the development of a sound record regarding revenue decoupling; and (3) HSEA has not demonstrated that the Consumer Advocate will not adequately represent its interest in revenue decoupling.

## I. DISCUSSION

### A. BACKGROUND

In its Order Initiating Proceeding, filed October 24, 2008 in Docket No. 2008-0274 (“Initiating Order”), the Commission opened this docket for the purpose of examining the implementation of “a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies’ revenues and profits from electricity sales.” *Id.* at 9, para. 1.

The Initiating Order also recognized that decoupling is, in essence, a form of ratemaking: “Included in the [HCEI Agreement<sup>3</sup>] is a commitment by the HECO Companies to modify their traditional rate-making model by implementing a decoupling mechanism. Generally, decoupling is a regulatory tool designed to separate a utility’s revenue from changes in energy sales.” *Id.* at 2.

Further, the Initiating Order recognized the need to expeditiously develop a decoupling mechanism to facilitate the interim decision in HECO’s 2009 test year rate case: “[T]he HECO Companies and the Consumer Advocate agreed that ‘[t]he revenues of the utility will be fully decoupled from sales/revenues beginning with the interim decision in the 2009 Hawaiian Electric Company Rate Case (most likely in the summer of 2009).’” *Id.* at 4. To that end, the

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<sup>3</sup> The October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* is referred to as the “HCEI Agreement”.

Commission indicated that “to expedite this process, the commission will direct the HECO Companies and the Consumer Advocate to submit to the commission a joint proposal on decoupling that addresses all of the factors identified in their Agreement within sixty days of the date of this Order.” Id. at 5.

**B. STANDARD FOR INTERVENTION**

Motions to intervene are governed by the Rules of Practice and Procedure Before the Public Utilities Commission, Title 6, Chapter 61, HAR (the “Commission’s Rules of Practice and Procedure”), which pertain to intervention as a party as well as participation without intervention. HSEA has labeled its Motion as a “Motion for Intervention” filed pursuant to HAR § 6-61-55.<sup>4</sup> Under HAR § 6-61-55(a), “A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant.”

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should

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<sup>4</sup> HAR § 6-61-55(b)(1) requires that a motion to intervene refer to “[t]he nature of applicant’s statutory or other right to participate in the hearing.” With respect to this requirement, HSEA claims that Hawaii Revised Statutes (“HRS”) § 269-13 “provides that statutory basis for HSEA’s participation in the hearing.” Motion at 3. Although the Initiating Order provided for the filing of motions to intervene or participate in this docket, HRS § 269-13 does not provide any statutory basis for HSEA’s participation in this proceeding. HRS § 269-13 simply provides:

Right to be represented by counsel

At any investigation by or proceeding before the public utilities commission the public utility or the person concerned, or other respondent or party and any complainant or permitted intervenor shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called.

be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

**C. HSEA'S MOTION FOR INTERVENTION SHOULD BE DENIED.**

Based on the standards set forth above, HSEA has not justified its intervention as a full party in this docket, and thus the relief requested in its Motion should be denied.

**1. HSEA's Focused Interest in the "Solar Industry" and "Development of PV Systems" is Beyond the Scope of Revenue Decoupling and Ratemaking Issues, and Could Only Serve to Unduly Broaden the Issues or Delay this Proceeding.**

HAR § 6-61-55(b)(7) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation will broaden the issues or delay the proceeding." With respect to this requirement, HSEA contends that its "participation will not broaden the issues or delay the proceeding." Motion at 8. In light of HSEA's focus on solar issues, HSEA's contention is unconvincing.

HSEA's alleged interest in this docket is entirely predicated on its status as the "organizational representative of the interests of Hawaii's indigenous solar industry",<sup>5</sup> and more

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<sup>5</sup> Motion at 5.

specifically on its members' "development of PV systems."<sup>6</sup> For example, HSEA contends that the "planned engagement of the decoupled utility directly in the business of HSEA's member companies – development of PV systems, as discussed in the "PV Roofs" [Section 4.8 of the HCEI Agreement, which addresses the "PV Host Program"] – indicates that the practices of the decoupled utility will directly impact the financial and economic interests of the HSEA member companies." Motion at 6. This contention is without merit.

The "PV Host Program" discussed in Section 4.8 of the HCEI Agreement provides customers the option of hosting utility-owned photovoltaic ("PV") equipment in exchange for a site rental payment and/or use of a portion of the PV energy generated on the customers' respective sites. However, issues relating to the planned PV Host Program are not reasonably pertinent to issues concerning the development and implementation of a decoupling mechanism, but rather, would be more appropriately addressed in a separate docket.

In fact, Section 4.8 of the HCEI Agreement expressly provides that: "The Hawaiian Electric Companies shall facilitate the development of photovoltaic (PV) energy by submitting an application to the PUC for a 'PV Host Program' by March 31, 2009 . . . ." Given that the issues related to the PV Host Program will be addressed in a separately filed docket, addressing HSEA's general concern for the "solar industry" and PV developers as part of the Commission's revenue decoupling investigation could only serve to unduly broaden the issues and delay this proceeding.

Given the expeditious procedural schedule that the Commission has set for this docket (e.g., the 60-day deadline for a joint proposal on decoupling; and the Commission's goal of issuing a decision approximately in the summer of 2009), this should be of particular concern in

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<sup>6</sup> Id. at 6.

this instance.<sup>7</sup>

In addition, the fact that revenue decoupling is addressed in the HCEI Agreement does not render every other clean energy issue addressed in that agreement pertinent to revenue decoupling. The HCEI Agreement discusses numerous initiatives relating to a vast array of clean energy issues including but not limited to: wind power, solar energy, biofuels, feed-in tariffs, renewable portfolio standards, greening transportation, energy efficiency, demand response, advanced metering infrastructure, seawater air conditioning, distributed generation and energy storage, smart grid technologies, the clean energy initiative surcharge and clean energy scenario planning.<sup>8</sup> Permitting every entity with an interest in some aspect of the HCEI Agreement to intervene in every proceeding concerning any aspect of the HCEI Agreement would interfere with “just, speedy and inexpensive determination” of those proceedings, thus undermining the purpose of the Commission’s Rules of Practice and Procedure.

Moreover, HSEA’s focused interest in the “solar industry” and the “development of PV systems” (which involve a specific type of solar technology) is beyond the scope of this proceeding, the purpose of which is to examine the implementation of a revenue decoupling mechanism that separates the economic linkage between a utility’s revenues and profits from electricity sales for the HECO Companies. As a result, the issues relating to the “development of PV technology” are not reasonably pertinent to ratemaking issues surrounding revenue decoupling.

HSEA nonetheless contends that revenue decoupling will change “the incentive structure

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<sup>7</sup> Notably, at least eight motions to intervene have been filed to date in this docket by parties including: Life of the Land; Haiku Design and Analysis; Blue Planet Foundation; Hawaii Holdings, LLC; Hawaii Renewable Energy Alliance; the State of Hawaii Department of Business, Economic Development, and Tourism; HSEA; and Tawhiri Power LLC.

<sup>8</sup> See HCEI Agreement §§ 1, 4, 5, 7, 9, 10, 12, 13, 17, 18, 19, 26, 28, 29 and 32, respectively.

that governs the utility's interactions"<sup>9</sup> with the solar industry and its customers, thereby affecting its members' "ability to deliver substantial savings on operating costs . . . ."<sup>10</sup> HSEA speculates that "it would be possible to implement a system that would harm the interests of the state's indigenous solar industry."<sup>11</sup> These assertions are unsupported, and without merit.

For example, HSEA does not provide any explanation as to how severing the link between a utility's revenues and sales would affect the "operating cost" of a developer of PV technology. Similarly, HSEA does not provide any description of how the "incentive structure that governs the utility's interactions" with the solar industry would be affected by a ratemaking mechanism that only governs the revenues paid to the utility by its customers. Accordingly, there is simply no basis for HSEA's contention that the ratemaking issues in this proceeding "go to the heart of the indigenous solar industry's business model."<sup>12</sup> To the contrary, issues relating to the "development of PV systems" and the "solar industry's business model" would be more appropriately addressed in other dockets, such as the Feed-In Tariffs docket, Docket No. 2008-0274, opened on October 24, 2008 to examine the rates paid to other parties by the utility for energy.

**2. HSEA Has Not Demonstrated that Its Intervention Will Assist in the Development of a Sound Record Regarding Decoupling.**

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation can assist in the development of a sound record[.]"

HSEA's Motion, however, does not indicate how HSEA could contribute to a discussion on developing and implementing a decoupling mechanism. For example, the Motion does not specifically identify any of HSEA's potential witnesses, or any experience with decoupling

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<sup>9</sup> Id. at 5.

<sup>10</sup> Id. at 6.

<sup>11</sup> Id. at 9.

<sup>12</sup> Id. at 5.



and/or ratemaking issues that might assist in the development of a sound record. In addition, HSEA has not discussed or provided any examples of any substantive expertise, knowledge or experience that it may possess regarding decoupling, which as discussed above, involves severing the economic linkage between utility revenues and sales.

Instead, HSEA claims that its “member companies are in direct, daily contact with the consumers and developers of the majority of solar power produced in the State” and that “HSEA’s presumed representative brings significant public policymaking experience and analytical skills to the assessment of the appropriateness and pace of the decoupling process.” Motion at 7. HSEA further alleges that its “presumed representative” has a background in government, economic and econometric analysis, and finance.<sup>13</sup>

However, HSEA has not explained how this “contact” with solar developers and consumers, “public policymaking experience” or a background in government, economics and finance translates into expertise, knowledge or experience in issues concerning the development and implementation of a decoupling mechanism. To the contrary, HSEA’s speculative assertions are demonstrative of its focused interest in the solar industry, which is not reasonably pertinent to the revenue decoupling and ratemaking issues to be explored in this docket.

**3. HSEA Has Not Demonstrated that the Consumer Advocate Will Not Adequately Represent its Interests in Decoupling.**

HAR § 6-61-55(b)(5) requires that motions to intervene make reference to “[t]he extent to which the applicant’s interest will not be represented by existing parties[.]” Although HSEA acknowledges that the Consumer Advocate is a party to this docket,<sup>14</sup> HSEA claims that:

None of the named parties has the same interests as Applicant or may fairly represent Applicant, at a minimum because the named parties have operated in

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<sup>13</sup> See Motion at 7-8.

<sup>14</sup> See id. at 6.

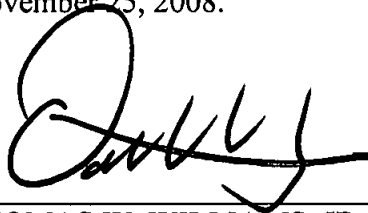
opposition to HSEA's member companies in both related preceding dockets and in the marketplace to sell kWh to Hawaii's homeowners and businesses.<sup>15</sup>

This argument is unpersuasive, as HSEA's interests in revenue decoupling issues will be adequately represented by the Consumer Advocate, which is "statutorily required to represent, protect, and advance the interest of all consumers." HRS § 269-51 (emphasis added). Thus, the Consumer Advocate is required to ensure that the decoupling mechanism being investigated in this docket treats all consumers (including HSEA's members) fairly. Given the Consumer Advocate's resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility ratemaking proceedings, this is a task to which the Consumer Advocate is well-suited.

## II. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that HSEA's Motion to Intervene be denied.

DATED: Honolulu, Hawaii, November 25, 2008.



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THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAII ELECTRIC LIGHT COMPANY, INC., and  
MAUI ELECTRIC COMPANY, LIMITED

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<sup>15</sup> *Id.* HSEA further asserts that "[t]he named parties are HECO, HELCO, MECO, their outside counsel, KIUC and its outside counsel, and the Department of Commerce and Consumer Affairs." *Id.* This assertion is incorrect and warrants clarification, as the Initiating Order only provided that "[t]he HECO Companies and the Consumer Advocate are parties to this investigative docket." Initiating Order at 9.

**DECLARATION OF  
COUNSEL**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

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DOCKET NO. 2008-0274

Instituting a Proceeding to Investigate  
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Limited

**DECLARATION OF COUNSEL**

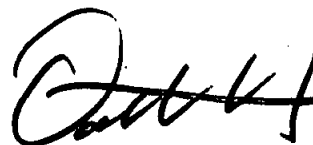
1. I, Damon L. Schmidt, am counsel of record herein for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited. I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel, a Limited Liability Law Partnership LLP ("Goodsill"), whose offices are located at Ali'i Place, Suite 1800, 1099 Alakea Street, Honolulu, Hawaii, 96813.

3. The Motion to Intervene of Hawaii Solar Energy Association ("HSEA"), filed by HSEA on November 13, 2008 in this docket, was mailed to Goodsill in an envelope with a November 14, 2008 postmark, a true and correct copy of which is attached as Exhibit "A".

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, November 25, 2008.



DAMON L. SCHMIDT

**DECLARATION OF  
DEAN K. MATSUURA**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

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Hawaiian Electric Company, Inc., Hawaii Electric  
Light Company, Inc., and Maui Electric Company,  
Limited

DOCKET NO. 2008-0274

**DECLARATION OF DEAN K. MATSUURA**

1. I, Dean K. Matsuura, am Manager, Regulatory Affairs for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. The Motion to Intervene of Hawaii Solar Energy Association ("HSEA"), filed by HSEA on November 13, 2008 in this docket, was mailed to HECO in an envelope with a November 14, 2008 postmark, a true and correct copy of which is attached as Exhibit "B".

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, November 25, 2008.

  
DEAN K. MATSUURA

# **EXHIBIT A**

MARK DUDA - PRESIDENT  
HAWAII SOLAR ENERGY ASSOCIATION  
c/o Suntech Hawaii  
PO Box 1462  
Kailua, HI 96734

THOMAS W. WILLIAMS, JR., ESQ.  
PETER KIKUTA, ESQ.  
GOODSILL ANDERSON QUIN & STIFEL LLC  
1099 Alakea Street, Suite 1800  
Honolulu, HI 96813

Exhibit "A",  
Page 1 of 1

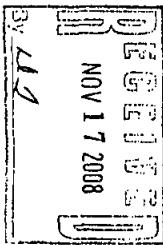
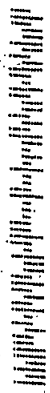




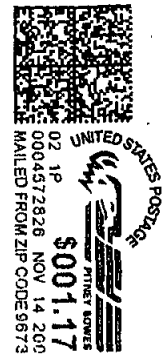
# **EXHIBIT B**

MARK DUDA - PRESIDENT  
HAWAII SOLAR ENERGY ASSOCIATION

c/o Suntech Hawaii  
PO Box 1462  
Kailua, HI 96734



DEAN MATSUURA  
MANAGER  
REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P.O. Box 2750  
Honolulu, HI 96840-0001



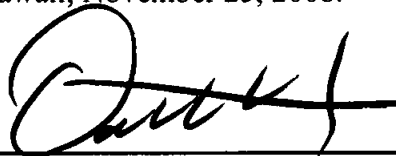
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF HAWAII SOLAR ENERGY ASSOCIATION, DECLARATION OF COUNSEL, DECLARATION OF DEAN K. MATSUURA and EXHIBITS "A" & "B", together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Randall J. Hee, P.E. President and CEO Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766-2000
	X	Timothy Blume Michael Yamane Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766

Hand Delivery	U.S. Mail	
X		Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Rhonda L. Ching, Esq. Morihara Lau & Fong LLP 841 Bishop Street, Ste. 400 Honolulu, HI 96813
	X	Mark Duda President Hawaii Solar Energy Association P.O. Box 37070 Honolulu, HI 96837

DATED: Honolulu, Hawaii, November 25, 2008.




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THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC., and  
MAUI ELECTRIC COMPANY, LIMITED